

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. KENAN,) OTA NO. 21129291
)
)
) APPELLANT.
)
)
)
_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, August 30, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
M. KENAN,) OTA NO. 21129291
APPELLANT.)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:49 a.m. and concluding at 10:58 a.m.
on Tuesday, August 30, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Administrative Law Judge: MIKE LE

For the Appellant: M. KENAN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

BRIAN WERKING

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

(Department's Exhibits A-J were previously received in Judge Le's minutes and orders.)

P R E S E N T A T I O N

	<u>PAGE</u>
By Mr. Kenan	7
By Mr. Werking	8

C L O S I N G S T A T E M E N T

	<u>PAGE</u>
By Mr. Kenan	10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

California; Tuesday, August 30, 2022

10:49 a.m.

JUDGE LE: We are opening the record in the Appeal of Kenan. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 21129291. Today's date is Tuesday, August 30th, 2022, and the time is 10:49 a.m. This hearing is being conducted electronically with the agreement of the parties.

I am Administrative Law Judge Mike Lee, and I will be hearing and deciding this case pursuant to the procedures of OTA's Small Case Program.

Now, for the parties introductions. For the record, will the parties state their name and who they represent, starting with Respondent Franchise Tax Board.

MR. WERKING: Brian Werking representing Franchise Tax Board.

MR. KENAN: Hi. Murat Kenan representing myself.

JUDGE LE: Thank you, both.

MR. KENAN: Thank you.

JUDGE LE: This is Judge Le. Let's move on to my minutes and orders. As discussed with the parties at the prehearing conference on August 3rd, 2022, and notated in my minutes and orders, the issue in this matter is whether Appellant has shown any error in adjustments the IRS made

1 to Appellant's 2017 tax year or demonstrated that FTB
2 erred in proposing additional tax based on the IRS's
3 adjustments.

4 Appellant Mr. Kenan will testify as a witness.
5 Respondent's Exhibits A through J were entered into the
6 record in my minutes and orders, and Appellant did not
7 submit an exhibit. This oral hearing will begin with
8 Appellant's presentation and witness testimony for up to
9 ten minutes.

10 Does anyone have any questions before we begin?

11 Respondent Franchise Tax Board, any questions?

12 MR. WERKING: No question from Respondent.

13 JUDGE LE: This is Judge Le. Thank you.

14 And, Appellant, any questions?

15 MR. KENAN: No, sir.

16 JUDGE LE: Thank you.

17 In that case, at this time, Mr. Kenan, would you
18 raise your right hand.

19

20 M. KENAN,

21 produced as a witness, and having been first duly sworn by
22 the Administrative Law Judge, was examined and testified
23 as follows:

24

25 JUDGE LE: Thank you.

1 MR. KENAN: Thank you.

2 JUDGE LE: You have up to ten minutes for your
3 presentation and testimony starting at 10:51 a.m. Please
4 proceed.

5

6 PRESENTATION

7 MR. KENAN: Yes. This was total of, like -- I
8 owed the IRS around \$5,000. I'm not exactly sure what was
9 the exact amount. And what happened is I was paying it
10 just fine. Everything was okay, and I paid I believe
11 \$4,000 on it, and there's \$900 left. And, unfortunately,
12 I lost my job, and I did have an accident. Currently I'm
13 not working, and all the expenses came up. And,
14 unfortunately, I do not have the funds to pay rest of it
15 and ask for some kind of adjustment from the IRS, and here
16 we are.

17 JUDGE LE: This is Judge Le. Thank you,
18 Mr. Kenan. Does that conclude your presentation and
19 witness testimony?

20 MR. KENAN: Pretty much, yes. And I paid most of
21 the -- whatever I owed to the IRS, and I had very good
22 intention to pay rest of it. Even the IRS sent me some
23 time ago -- long time ago, like, they said, okay, we can
24 take half of it, you know, just pay everything. And I
25 didn't accept it because I did have very good intentions

1 to pay completely everything to IRS but, unfortunately,
2 things didn't work out the way it was.

3 I mean, once I lost my job it was, like, horrible
4 for me and all the expenses piled up and, unfortunately, I
5 do not have the funds. I would have paid it. I mean,
6 it's only, like, I think \$900 or something. But,
7 unfortunately, I have to choose between the rent and food
8 or paying the IRS. At this moment I do not have enough
9 funds to pay for it.

10 JUDGE LE: This is Judge Le. Thank you,
11 Mr. Kenan, for your testimony.

12 MR. KENAN: Thank you.

13 JUDGE LE: Let me turn to Respondent.

14 Respondent, do you have any questions for
15 Mr. Kenan?

16 MR. WERKING: We do not at this time.

17 JUDGE LE: This is Judge Le. Thank you.

18 In that case, let's now turn it over to
19 Respondent.

20 You have up to ten minutes, starting at
21 10:53 a.m. Please proceed.

22 MR. WERKING: Thank you Judge Le.

23

24 PRESENTATION

25 MR. WERKING: The issue in this appeal is whether

1 Appellant has met his burden to show error in a 2017
2 proposed deficiency assessment as based on federal
3 adjustments to his 2017 tax year account. Appellant does
4 not dispute the federal adjustments or the California
5 application of the federal assessment that result in the
6 2017 proposed deficiency assessment.

7 The Appellant's contentions relate to his ability
8 to pay the proposed assessment, which is not relevant in
9 determining the Appellant's proper amount of tax due.
10 Accordingly, Appellant has not met his burden to error in
11 the 2017 proposed deficiency assessment. In this case,
12 the IRS examined Appellant's 2017 return, adjusted his
13 federal tax year account to reflect an early distribution,
14 and assessed additional tax.

15 Respondent, the Franchise Tax Board, applied the
16 federal adjustment increasing Appellant's taxable income
17 in the amount of the early distribution and proposed
18 additional tax of \$990. A proposed deficiency assessment
19 by Respondent that is based on federal adjustments is
20 presumptively correct, and Appellant bears the burden to
21 show error. A taxpayer must provide uncontradicted
22 credible, competent, and relevant evidence to show that
23 the FTB's determination is incorrect, or it must be
24 upheld.

25 Appellant's contentions relate to his ability to

1 pay the proposed deficiency but are not relevant and do
2 not demonstrate that the proposed assessment is in error.
3 As such, Appellant has not met his burden to show error in
4 the 2017 proceed deficiency, and the proposed assessment
5 should be sustained.

6 Should the OTA uphold the proposed deficiency,
7 Respondent welcomes Appellant to either submit an
8 application for an installment agreement or offer and
9 comprise. Information regarding both have been provided
10 as attachments to Respondent's opening brief and are also
11 available on FTB's website by searching for "Installment
12 Agreement" or searching for "Offer and Compromise."

13 Thank you, and I'll be happy to answer any
14 questions the OTA may have.

15 JUDGE LE: Thank you. This is Judge Le.

16 I do not have any questions at this time. So
17 let's turn it back to Appellant to see if they have any
18 rebuttal statements they would like to make.

19 Mr. Kenan, you have up to five minutes for your
20 rebuttal.

21

22 CLOSING STATEMENT

23 MR. KENAN: No. Actually, Mr. Brian Werking is
24 saying whatever the law is, it is the law. I'm not
25 against doing anything against to it, and I don't know the

1 tax laws or anything. If he says that's what it is,
2 that's what is.

3 But just, you know, I sent some papers to IRS for
4 taking off some of the penalties and that kind of stuff,
5 but that's all I have. I mean, I don't have any other
6 paperwork or anything. Right now currently I only have
7 the papers from IRS for the prehearing.

8 JUDGE LE: Thank you. This is Judge Le.

9 MR. KENAN: Thank you.

10 JUDGE LE: Does this conclude your rebuttal?

11 MR. KENAN: Yes.

12 JUDGE LE: Okay. I do have a question for you,
13 Mr. Kenan. The FTB is saying there was an early
14 distribution in 2017. Can you confirm whether or not that
15 happened?

16 MR. KENAN: I do not recall, Your Honor. What I
17 know is it was, like, total of \$5,000, and I paid \$4,000.
18 And I did have very good intention to continue on rest of
19 it but, unfortunately, certain unexpected things happen.
20 So that's what it is.

21 JUDGE LE: Thank you. This is Judge Le.

22 MR. KENAN: Thank you.

23 JUDGE LE: Okay. At this point I have no further
24 questions. So that concludes our hearing.

25 Thank you everyone for coming in today. This

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

case is submitted on August 30th, 2022, and the record is now closed. I will decide this case later on and send a written opinion of this decision within 100 days.

Today's hearing in the Appeal of Kenan is now adjourned.

(Proceedings adjourned at 10:58 a.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 6th day of September, 2022.

ERNALYN M. ALONZO
HEARING REPORTER